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IN THE

Supreme Court of the United States

OCTOBER TERM 1940

No. 800801

JACK SCHNEIDER,

Petitioner,

against

THE PEOPLE OF THE STATE OF NEW YORK.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF GENERAL SESSIONS OF THE COUNTY OF NEW YORK, AND BRIEF IN SUPPORT THEREOF

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioner, Jack Schneider, respectfully prays that a *writ of certiorari* issue to review the judgment of the Court of General Sessions of the County of New York, convicting him of the crime of coercion, upon which said judgment he was sentenced by a judge of the said Court, on July 7, 1939, to the New York County Penitentiary for an indeterminate term, and which said judgment has since been affirmed by the Appellate Division of the Supreme Court of the State of New York, in and for the First Department, and by the Court of Appeals of the State of New York, which said last named court is the court of last resort of the said State.

And in support of his said petition, your Petitioner respectfully shows to this Honorable Court as follows:

A

Statement of the Matter Involved

Your Petitioner is a Jew, an alien, a member of the American Labor Party, a political party duly organized and existing under the laws of the State of New York, and an official of Furriers' Joint Council, an unincorporated association, being a representative body consisting of local labor unions in the fur industry, which said Furriers' Joint Council as well as the locals of which it is composed were at the times hereinafter mentioned affiliated with International Fur Workers Union, and said last mentioned organization was at the times hereinafter mentioned affilated with Congress of Industrial Organizations, commonly known and hereafter referred to as C. I. O.

On or about May 24, 1938, your Petitioner and six other persons were indicted by the Grand Jury of the County of New York, State of New York, for the alleged crimes of assault, coercion, and conspiracy to commit assault and coercion. Your Petitioner and five of the other defendants were thereafter brought to trial in the Court of General Sessions of the County of New York on May 16, 1939, and the following days until the 16th day of June, 1939, on which last mentioned day the jury which had been impaneled to try the said case returned a verdict acquitting four of your Petitioner's co-defendants of all the crimes charged in the indictment, disagreeing as to the fifth one, and *acquitting your Petitioner of the crime of assault and conspiracy to commit assault and coercion, but convicting him of the crime of coercion.* Thereupon and on July 7, 1939, your Petitioner was sentenced by a judge of the said Court to the New York Penitentiary for an indeterminate term.

Thereupon your Petitioner appealed to the Appellate Division of the Supreme Court of the State of New York, in and for the First Department, which court affirmed the said conviction. Thereupon your Petitioner appealed to the Court of Appeals of the State of New York, by permission of the Chief Judge of the said Court, and the said appeal resulted in an affirmance of the said conviction by a divided Court, five Judges voting for the affirmance of the said conviction while the Chief Judge and one Associate Judge dissented from such decision and voted for a reversal of the conviction. The decision by the Court of Appeals affirming said conviction was made on December 31, 1940. The record in the case was thereupon returned by the Court of Appeals to the Court of General Sessions.

Thereafter, a motion was made by your Petitioner in the said Court of Appeals for an amendment of the remittitur of the said Court to the Court of General Sessions, which said motion was granted and the said remittitur amended. The amended remittitur was filed in the Court of General Sessions of the County of New York on January 31, 1941.

A duly certified copy of the said indictment and of all the proceedings had thereon in the said courts is made part hereof and will be filed in this Honorable Court together with this petition.

As appears from the said record the prosecution herein was the outgrowth of a general strike conducted by Furriers' Joint Council (hereinafter referred to as the Union) in the City of New York, commencing on or about April 1, 1938, which said strike was itself the outgrowth of a lockout ordered by an association of employers in the fur industry of the City of New York, which said lockout was in effect for some time prior to the declaration of the strike by said Furriers' Joint Council.

It was claimed by the prosecution that one Jacob Friedlander, a member of the Union and the father-in-law of one of the employers involved in the said strike and lockout,

had been assaulted at the Union headquarters on the afternoon of April 8, 1938, by three of Petitioner's co-defendants (Liberi, Rau, and Gru) by order of Petitioner and one of his co-defendants (Mencher) in an effort to extract from Friedlander information about his employer; and that the assault was committed in pursuance to a previous conspiracy entered into by all of the defendants, in pursuance to which conspiracy Friedlander had been convoyed to Union headquarters by the order of the sixth defendant tried with Petitioner (Lauber). All of the persons named, except Liberi, were officials of more or less importance in the Union, and Liberi, although an ordinary member, was active in the strike. Petitioner was represented by the prosecution to have been the principal strike leader. Mencher (as to whom the jury disagreed) was represented as being next in importance in the conduct of the said strike.

It was undisputed that two days earlier, to wit, April 6, 1938, Friedlander had been followed by Liberi in order to ascertain his movements. The reason therefor was disputed: The prosecution claimed that Friedlander was followed in order to see whether his movements led to the place where it was suspected his employer was carrying on business during the strike; while the defense claimed that he was followed in order to check up on his claim that he could not do any picketing because of an ailment, and also to ascertain whether his claim to sick benefit, based on the said ailment, was justified. There was no claim that Petitioner did anything except order the alleged assault by his co-defendants, who were acquitted, and the prosecutor told the jury expressly that the Petitioner's guilt was based upon his responsibility for the acts of his said co-defendants in committing the alleged assault. There was no evidence in any way connecting Petitioner with the occurrences of April 6, 1938, but the prosecutor told the jury that they may *infer* that it was done by his direction because of his position as strike leader (Record, fols. 3746-3748).

While counsel for the defense was making his opening address to the jury, and was about to tell the jury what he intended to prove by way of factual situation bearing on the alleged coercion, he was stopped by the Court with the statement:

> "The Court: That would not be relevant in this case. *Confine yourself to the counts of conspiracy and assault*" (Record, fol. 121. Italics supplied throughout unless otherwise stated).

Thereafter, no reference of any kind whatsoever was had during the entire trial to the charge of coercion. And this charge was not again referred to until after the testimony was all in and defense counsel had concluded his summing up to the jury.

It was first mentioned again, rather perfunctorily, by the State's attorney in his summation to the jury; and then by the Court in its charge to the jury.

The long trial, while nominally a trial for assault and conspiracy, resolved itself into a trial of Petitioner for his political and economic views and affiliations. This was enhanced by the attack of the prosecutor on Petitioner's chief witness for allegedly holding similar views; and culminated in the Court instructing the jury that they may take into consideration the holding of such views in determining the credibility of witnesses. Petitioner had taken the witness stand and testified in his own defense.

The Appellate Division wrote no opinion. Neither did the Court of Appeals, except the following memorandum:

> "Judgment affirmed. No opinion. All concur except Lehman, Ch. J., and Loughran, J., dissent on ground that *there were errors committed at the trial which in their opinion were clearly prejudicial.*"

The amended remittitur of the Court of Appeals concludes as follows:

> "Judgment affirmed, this Court having overruled the contention of the appellant that his trial and conviction

were in violation of the due process clause and the equal protection of the laws clause of the Fourteenth Amendment to the Constitution of the United States, and having refused to pass upon the effect of any parts of the charge to which no exceptions were taken."

B

Question Presented.

The sole question presented is:

Was the conviction of Petitioner in accordance with due process of law and the equal protection of the laws as required by the Fourteenth Article of Amendment to the United States Constitution, or was the said conviction in violation of the due process of law and the equal protection of the laws clauses of the said Amendment?

C

Reasons Relied On for the Allowance of the Writ.

The question presented is one of constitutional interpretation, namely, whether under our constitutional system, guaranteeing life, liberty, and property, against invasion except by due process of law, and the application of the laws alike to all persons, irrespective of race, nationality, religious, political, or social creed or belief, a person or group charged with crime may be treated differently because he, or they, or their witnesses, belong to a particular race or nationality, or because they hold certain political, social, or religious views, or belong to an organization whose members hold certain political or social views. It is the contention of Petitioner that the record shows that his trial and conviction were not in accordance with due process of law, but contrary to constitutional

guarantees with respect thereto and to the equal protection of the laws clause of the Fourteenth Article of Amendment to the United States Constitution. Petitioner contends that had the laws of the State of New York been applied to him on a basis of equality with all other persons charged with crime he would have been acquitted of the crime of which he now stands convicted; and that his conviction was due entirely to the fact that the laws had not been applied to him on a basis of equality with other persons charged with crime. Petitioner further shows that the protection of the Constitution of the United States had been invoked in the state courts in due time; and that the said protection had been denied him by the state courts.

The said contentions are based upon the following facts which appear in the record:

1. *Petitioner stands convicted of a crime for which he was not tried.*

Petitioner was actually tried for the crimes of assault, and conspiracy to commit assault and coercion by means of assault. He was acquitted of both, as were his co-defendants who were supposed to have conspired with him to commit the assault and coercion, and who were supposed to have actually committed the assault upon which the coercion charge depended. As already pointed out he was never tried on the charge of coercion, which had been ruled out by the Court at the commencement of the trial. This peculiar result, Petitioner claims, was due to the manner in which the case was tried, whereby he was singled out for attack by reason of the fact that he was a Jew, an alien, and particularly for his alleged radical political and social views and connections, coupled with the charge by the Court in submitting the case to the jury which permitted the jury to convict him of an offense for which he was not tried by the application of standards of credibility which are contrary to constitutional guarantees.

2. *The jury disbelieved the prosecution's sole witness, and convicted Petitioner solely because of his alleged radicalism.*

Petitioner claims that the record conclusively demonstrates the fact that the jury disbelieved the prosecution's sole witness as to the alleged assault,—the complaining witness Friedlander,—and convicted Petitioner solely because of his radical views, under a charge of the Court which permitted them to convict him of coercion on the basis of the occurrences of April 6, *which were not the basis of the indictment for coercion,* after a trial in which the jury were led to believe by the Court and prosecutor that Petitioner's alleged radical views were part of the crime charged against him in the indictment, and under a charge by the Court in which they were expressly told that in weighing the testimony of any witness, they may take into consideration his *religious, political and social* views. This charge was in the following language:

> "Under our law a man has a right *to belong to any party or church that he may select, or any union.* It is not so much a question of what party or what church he belongs to as it is a question of the manner of man he is. *Does he respect the law* of his land? Does he respect the law of this State, as I have given it to you. That is the law of assault, the law of conspiracy and the law of coercion, and I certainly think you ladies and gentlemen in your deliberations will not inquire in this case and *on the evidence you have heard, as to the political, social or religious affiliations of a man* in connection with this case, *except insofar as these inquiries may help you to determine where the truth lies*" (fols. 3866-3867).

3. *Petitioner as well as his chief witness were tried and convicted of radicalism.*

Petitioner in his defense relied on an alibi: He claimed that at the time when the complaining witness, Friedlander, claimed to have had a talk with him at the Union head-

quarters, at which time Petitioner is supposed to have given the order to his acquitted co-defendants to coerce Friedlander into giving certain information by beating him up, he, Petitioner, was seated on the platform at a mass meeting conducted by the Union in a public hall in connection with the strike. His principal alibi witness was Michael Quill, president of the Transport Workers Union, who was one of the speakers at that meeting. This witness was subjected to a severe attack for alleged radicalism, and his presence on the witness stand actually turned into a trial of this witness for his alleged radical social and political views, particularly in connection with labor disputes. Petitioner's own presence on the witness stand, as disclosed by the record, was not an inquiry relating to the commission of the crimes charged, or into any facts bearing on that question, but into the alleged radicalism of his social and political views, particularly as related to labor disputes.

4. *The character of the trial and its relation to the charge of the Court to the jury.*

Petitioner's principal alibi witness, Michael Quill, preceded him on the witness stand. He testified briefly about attending the mass meeting in question, and as to the time it was held; and that he saw Petitioner on the platform when he arrived and when he left. He was then cross-examined at some length about his acquaintance with Petitioner, and the unions to which they, respectively, belonged; developing the fact that both these unions belonged to the C. I. O. Thereupon the cross-examination proceeded as follows:

> "Q. How long have you been engaged in Union activities of one sort or another? A. Well, I was in the Irish Transport and General Workers' Union back in 1923.
>
> Q. I didn't get the name of that union. A. The Irish Transport and General Workers' Union.

Q. Was that here or somewhere else? A. That was in Ireland.

Q. And in 1923? A. Yes.

Q. And were you active and prominent in union affairs *there at that time?* A. Not prominent—just a member of the union.

Q. *Did they have a strike?*

Mr. Samuel Markewich: I object as to whether there was a strike in Ireland.

The Court: *It is cross-examination.*

Objection overruled" (fols. 814-815).

* * * * * * *

"Q. I think you said a bit back in your testimony, that over in Ireland they had a more peaceful way of settling labor disputes and strikes, is that right? A. Yes, that is correct.

Q. *Well, would I be correct in saying that you do not advocate the use of force and violence in strikes?*

Mr. Arthur Markewich: Objected to.

The Court: Objection overruled" (fols. 828-829).

Thereafter the cross-examination continued for many pages, all designed to show, or to insinuate, that the witness believed in the use of violence in labor disputes.

While other witnesses for Petitioner were on the witness stand, the State's attorney was permitted to cross-examine them on matters which had no relevancy whatever to the case, except to create a general atmosphere of prejudice against Petitioner and the Union of which he was, or was alleged to be, the leader, thus creating an atmosphere which made a fair trial according to law impossible. This reached its climax when Petitioner took the witness stand, and particularly during his cross-examination. The opening of the cross-examination was as follows:

"*Cross-examination by Mr. Hale.*

Q. Mr. Schneider, where were you born? A. In Roumania.

Q. What part of Roumania? A. Bessarabia.

Q. That is the same place that Izzy Gru was born, is it not? A. The same country.

By the Court.

Q. *What was your true name in Bessarabia?* A. Jack Schneider—Schneider.

Q. *What was Izzy Gru's true name in Bessarabia?* A. I didn't know him on the other side" (fols. 2463-2464).

These marks of hostility on the part of the presiding judge, and insinuations of other crimes, both by the State's attorney and by the presiding judge, continued throughout a long cross-examination, and included the insinuation that Petitioner was illegally in this country, and was an undesirable alien.

There was also the continuous attack upon Petitioner for his alleged views on social questions, which commenced with an argument between the Court and Petitioner while Petitioner was testifying on direct. As stated before, it was the theory of the prosecution that the assault upon Friedlander was in an endeavor to discover whether or not "scabbing" was going on during the strike. It was the contention of the defense that "scabbing" was not a problem during the strike because the strike had been preceded by a lockout on the part of the employers, the industry having suffered from overproduction, and the employers did not therefore engage in any production during the strike. In this connection Petitioner was asked by his counsel the question:

"Q. And isn't it a fact that the great problem confronting the industry at that time was that there was overproduction of finished stock, and that the employers themselves were trying to devise means of stopping production at that time?"

To this the appellant replied:

"This was the general opinion in the trade."

At which point the Court broke in with the following:

"By the Court.

Q. *Wouldn't that be a good reason for a lockout—overproduction?* A. Why should the workers suffer by it?

Q. *Why should the boss produce if he could not sell his goods?"* (fols. 2442-2443).

Petitioner believes and asserts that the Court, by its conduct and rulings, made a fair trial impossible; that the jury were thereby led to believe that Petitioner was not on trial for anything that he actually did but for the things he believed in or "stood for", and the manner in which he conducted the labor union of which he was an official, and particularly the strike in which that Union was involved. The jury were thereby further led to believe that even if they disbelieved the testimony of the prosecuting witness, and therefore were bound to acquit Petitioner of the charges of assault and conspiracy, they might nevertheless convict him of coercion, although there was no evidence thereof and he had not been tried therefor, as they would thereby be doing their duty as good citizens in ridding this country of an undesirable radical alien. Also, that under the rules of law which they understood the Court to lay down with respect to the manner in which the radical views of a witness affected his credibility, the jury believed that they had a right to disregard Petitioner's assertions and that of his chief witness and bring in a verdict of guilty based solely on their own speculation,—which the prosecutor with the acquiescence of the Court,—told them they might indulge in as to what a man like Petitioner might do in the situation presented by the strike.

Your Petitioner verily believes that this application presents a case cognizable under the rule of this Honorable Court, and one eminently proper for review by this Honorable Court, not only because of the injustice done to him, but because it affects a large number of persons similarly

situated, and is therefore of great public interest, particularly in these times when persons situated like himself are in grave danger of being deprived of their liberty without due process of law, unless this Honorable Court intervene under the power granted to it by the Fourteenth Article of Amendment to the United States Constitution.

WHEREFORE, your Petitioner respectfully prays that a *writ of certiorari* be issued out of and under the seal of this Honorable Court, directed to the Court of General Sessions of the County of New York, in the State of New York, commanding that Court to certify and to send to this Honorable Court a full and complete transcript of the record of all proceedings in the within cause, and to stand to and abide by such order and direction as to your Honorable Court shall seem meet and the circumstances of the case require, and that your Petitioner may have such other and further relief or remedy in the premises as to this Honorable Court may seem just and proper.

Dated, New York, February 20, 1941.

LOUIS B. BOUDIN,
Of Counsel for Petitioner.